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NYNEX

July 25, 1996

Ex Parte

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street NW Room 222
Washington, DC 20554

**Re: CS Docket No. 96-83, Restrictions on Over-the-Air Reception Devices:
Television Broadcast and Multichannel Multipoint Distribution Service**

Dear Mr. Caton:

The attached letter by G. R. Evans, NYNEX Vice President - Federal Regulatory Affairs, was delivered today to Ms. Meredith Jones, Chief of the Commission's Cable Services Bureau. The letter sets forth NYNEX's position with respect to implementations of Section 207 of the Communications Act of 1996.

Questions regarding this matter should be directed to me at the above noted address or telephone number.

Sincerely,



cc: J. Chorney
J. Coltharp
M. Farquhar
D. Gips
M. Jones
S. Toller
A. Wallgren

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G R Evans
Vice President
Federal Regulatory Affairs

NYNEX

July 25, 1996

Ms. Meredith J. Jones
Chief, Cable Services Bureau
2033 M Street, NW
Room 918-A
Washington, DC 20554

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Dear Ms. Jones:

In CS Docket No. 96-83, the Commission is faced with the task of translating the language of Section 207 of the Telecommunications Act of 1996 (the Act) into appropriate Rules. A plain reading of the Act directs the Commission to remove restrictions concerning over the air reception devices, not to erect new barriers. Recent discussions with Commission staff indicate that the Commission may be considering the adoption of criteria contained in certain model building codes, the Building Officials & Code Administrators National Building Code (BOCA Code) for example, to care for safety concerns associated with the installation of such reception devices.

NYNEX opposes any arbitrary restrictions on viewer's ability to receive over the air transmissions, including municipal regulations restricting or regulating MDS antennas, masts or methods of installations such as those contained in Section 3109 of the BOCA Code. We understand there may be, in certain circumstances, legitimate safety concerns involved with these installations; however, we strongly urge the Commission to limit any restrictions arising out of such concerns to factual issues based on empirical data or proven risk. To our knowledge, no such data or evidence of risk have been introduced into the record in this proceeding.

While NYNEX is sensitive to legitimate safety concerns, we are opposed to those portions of the model building codes that contain unsupported demarcations between installations that are presumed allowable without municipal permits, and those that require permits. These codes are not based on any factual analysis for a decision in determination of these cutoff points. Thus, for example, we consider the use of the 12 foot mast height figure contained in the BOCA Code to be arbitrary and devoid of any substantive foundation. In fact, as the Wireless Cable Association (WCA) and others have advised the Commission, MMDS service providers have installed both guyed and un-guyed antenna structures as high as 50 feet. We are unaware of any documented evidence of failure resulting in injury to property or person resulting from such installations.



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NYNEX expects that a significant number of its potential customers will require a mast that is higher than 12 feet. For example, CAI, NYNEX's partner for distributing MMDS programming, currently uses 20-foot masts to serve 25% of its customers in New York City. If NYNEX or its customers were required to obtain local permits for every situation where a mast higher than 12 feet were required, which could include legal work, inspections and even hearings, it would impose a significant burden on the ability of customers to receive the service -- a result specifically forbidden by Section 207 of the Act. And, as discussed above, no safety or health risks have been introduced into the record that could justify requiring local permits for masts over twelve feet. Indeed, the facts show that mast heights of more than twelve feet are safe.

The Commission must not adopt arbitrary or restrictive standards which are not based on proven risks or legitimate safety concerns. The onerous mounting and height restrictions adopted under the self-serving guise of protecting public safety being advocated by certain parties, most notably the cities, municipalities and home owners associations (not the homeowners themselves) would not even pass the standard stated in the Commission's own proposed rules, which would require a showing that a regulation is "necessary" to accomplish "a clearly defined health or safety objective" and that the regulation "is not more burdensome...than is necessary to achieve the health or safety objective."

I hope our views on this matter will be of use in helping the Commission to promulgate rules in this proceeding fully consistent with Congressional intent.

Sincerely,

A handwritten signature in dark ink, appearing to read "G. R. Evans". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

G. R. Evans
Vice President